

State of New Jersey
Department of Labor and Workforce Development
Board of Review

MEMORANDUM

To: Cornelia Calderone, Chair, Joseph Sieber,
Vice Chair, and Frank Serico, Member

From: Gerald Yarbrough, Executive Secretary
Board of Review

Subject: Minutes of the May 24, 2006
Board of Review Meeting

Date: May 30, 2006

THESE MINUTES HAVE NOT BEEN FORMALLY APPROVED AND ARE SUBJECT TO CHANGE OR MODIFICATION BY THE BOARD OF REVIEW AT ITS NEXT MEETING. NO DECISION OF THE BOARD OF REVIEW IS FINAL UNTIL IT HAS BEEN MAILED TO THE INTERESTED PARTIES.

1. **FORMAL OPENING:** A regular meeting of the Board of Review, Department of Labor was held on Wednesday, May 24, 2006 at 9:00 a.m. at the Board of Review offices, Labor Building, John Fitch Plaza, 7th Floor, Large Conference Room, Trenton, New Jersey. Notice of said meeting was posted in the Board of Review's office, filed with the Secretary of State, and published annually in *The Trenton Times* and *The Star Ledger*. It was noted that the next regular meeting of the Board of Review is scheduled for Wednesday, May 31, 2006, at 9:00 a.m. at the Board of Review offices, Labor Building, John Fitch Plaza, 7th Floor, Large Conference Room, Trenton, New Jersey.

Roll Call: Present: Ms. Calderone, Chair
Mr. Sieber, Vice Chair
Mr. Serico, Member
Mr. Yarbrough, Executive Secretary

2. Following a motion by Mr. Serico and seconded by Mr. Sieber, the minutes of the May 17, 2006, meeting were approved, except that under Old Business, docket numbers 99,057 and 102,003 the Board voted not to reopen the cases.

3. Old Business
(a) 99,677

Mr. Gitter presented this case that involved a claimant who was employed as a restaurant manager. The claimant wrote a check to herself and cashed the check in the amount of \$7,000.00 after the employer expired. She was given authorization to write the check by the owner, before he passed away, but was aware that he passed away when she wrote the check. The Appeal Tribunal had held the claimant disqualified for benefits under N.J.S.A. 43:21-5(b) as her discharge was for gross misconduct connected with the

work. The Board noted that there was an investigation by the Division of Wage and Hour and the Appeal Tribunal did not indicate the reason the claimant's testimony was not credible. As a result, the Board voted to remand the case for testimony from the employer and from the Division of Wage and Hour. Mr. Gitter will prepare the remand.

4. New Business

(a) 103,090

Mr. Gitter described this case that involved a claimant who was suspended when she did not complete an assigned task. The claimant was scheduled to meet with the employer after the suspension, but did not do so because her child was ill. She attempted to contact the employer on a number of occasions, to no avail. When she reported to the worksite, her personal belongings were in a plastic bag and the employer asked for her keys to the worksite. The Appeal Tribunal had held the claimant disqualified for benefits under N.J.S.A. 43:21-5(a). The Board noted that the record is lacking and does not support the conclusion. As a result, the Board voted to remand the case for additional testimony. Mr. Gitter will prepare the remand.

(b) 79,637

As presented by Mr. Morley, This case involved a claimant that was employed as a delivery person. The claimant was under the direction and control of the employer and was discharged for job performance. The employer contends the claimant was an independent contractor. The Appeal Tribunal had held that the claimant was "in employment" and was not disqualified for benefits under N.J.S.A. 43:21-5(b). After discussion, the Board voted to affirm the Appeal Tribunal.

(c) 106,922

As described by Ms. Gagliardo, this case was docketed as an appeal in error. As a result, the Board voted to vacate the appeal. Ms. Gagliardo will prepare the decision.

(d) 96,213

Mr. Maddow presented this case that was previously remanded to the Appeal Tribunal for testimony from the Deputy regarding the timeliness of the claimant's appeal as well as testimony regarding the claimant's separation. The Appeal Tribunal had held the claimant ineligible for additional benefits during unemployment. The Board noted that the Appeal Tribunal did not obtain testimony from the Deputy or from the employer witness. As a result, the Board voted to remand the case for testimony from the employer. The appeal will be heard by another Appeal Tribunal. Mr. Maddow will prepare the remand.

5. Public Portion

There being no further business to transact, a motion was made by Mr. Sieber to adjourn the meeting. Mr. Serico seconded the motion.

SUBMITTED FOR APPROVAL:

Gerald Yarbrough
Executive Secretary